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## OLR Bill Analysis

### SHB 5272 (as amended by House "A")\*

#### ***AN ACT CONCERNING THE EXPIRATION OF CERTAIN LAND USE APPROVALS AND THE NEW HOME CONSTRUCTION GUARANTY FUND.***

#### **SUMMARY**

This bill allows zoning enforcement officers (ZEOs) to take enforcement action against a business that suspends work required by an unexpired site plan, subdivision, or inland wetlands approval. Under the bill, the ZEO may generally do so if he or she determines the business has no intent to resume the work within a reasonable time period and (1) finds the incomplete work creates a public health or safety hazard or (2) receives a complaint alleging it caused personal or property damage. The bill appears to treat these businesses like violators of zoning regulations by allowing the (1) ZEO to pursue certain enforcement actions that apply to zoning violations (e.g., written orders and civil fines under CGS § 8-12) and (2) municipality to fine violators (up to \$150 per day) if it adopts an ordinance to do so.

Separately, the bill expands eligibility for the New Home Construction Guaranty Fund. It allows consumers to recuperate money from the fund for judgments awarded against certain individuals with an ownership interest in a new home construction company who violated certain laws. It also makes these individuals and contractors liable for consumer payouts from the fund that result from a judgment against them.

With respect to the home guaranty fund, the bill also (1) increases, from \$30,000 to \$50,000 per claim, the maximum amount consumers may recuperate from the fund and (2) lowers, from \$750,000 to \$650,000, the fund's annual cap. It correspondingly increases (from \$300,000 to \$400,000) the funds exceeding this cap that must be annually transferred into the Consumer Protection Enforcement Account. Existing law requires any remaining excess to be transferred into the General Fund.

Lastly, the bill makes technical and conforming changes.

\*House Amendment “A” primarily (1) eliminates the underlying bill’s provisions allowing local land use authorities to move up certain approvals’ expiration dates; (2) adds the provisions allowing ZEOs to take enforcement actions against businesses suspending required work; and (3) in provisions on the guaranty fund, replaces references to individuals with financial or operational control of a new home construction company with references to, and requirements for, “proprietors.”

EFFECTIVE DATE: October 1, 2024, except the provision on site plan approvals is effective July 1, 2024, and the guaranty fund provisions are effective upon passage.

## **§§ 1-5 — BUSINESSES SUSPENDING WORK REQUIRED BY CERTAIN LAND USE APPROVALS**

### ***Enforcement Actions Under State Zoning Law***

State law authorizes municipal zoning officials (e.g., ZEOs) to enforce zoning regulations. This authority includes instituting actions and other proceedings to (1) prevent unlawful construction, alterations, or use; (2) restrain, correct, or abate zoning violations; or (3) prevent occupancy of violative buildings or land or other illegal acts in or on them. CGS § 8-12 specifies that these enforcement actions and proceedings include issuing written orders to remedy conditions that violate zoning regulations and seeking civil and criminal penalties in Superior Court (see BACKGROUND).

The bill expands the reasons for which zoning officials may initiate enforcement actions under CGS § 8-12 to include addressing public health or safety hazards related to suspended work required in connection with certain land use approvals. It specifically authorizes ZEOs (or authorized agents of an inland wetlands agency, as applicable) to take enforcement actions against “businesses” that suspend work required by unexpired site plan, subdivision (with less than 400 units), or inland wetlands approvals.

Under the bill, a ZEO or authorized agent may take enforcement action if he or she determines the business has no intent to resume the

work within a reasonable time period and (1) finds the incomplete work (i.e., physical improvements that the approval required but that are incomplete due to construction being suspended) creates a public health or safety hazard or (2) receives and verifies a property owner's complaint alleging these hazards caused personal or property damage. (It is unclear if the suspended work must be the direct cause of the damage and whether a ZEO is authorized to make this determination, or if a property owner need only allege it. Additionally, the bill does not specify how a ZEO must determine a business's intent or what constitutes a "reasonable time" to resume work.)

While the bill appears to apply the enforcement actions authorized under CGS § 8-12 (which apply only to zoning violations) to the work suspensions described above, it is unclear if the bill establishes these work suspensions as zoning violations.

Under the bill, a business is a sole proprietorship, trust, corporation, limited liability company, union, association, firm, partnership, or other organization or group of people.

### ***Municipal Citations***

Under existing law, any municipality may establish, by ordinance, penalties for violations of its zoning regulations. The bill additionally allows municipalities to establish penalties related to violations of enforcement actions the bill authorizes (i.e., against businesses that suspend work required by a site plan, subdivision, or inland wetlands approval, as described above). It is unclear what would constitute a "violation" in the context of the bill's authorization for ZEOs to institute enforcement actions.

Under existing law and the bill, the ordinance must establish the types of violations for which a citation may be issued and the amount of any fine to be imposed (up to \$150 for each day the violation continues), which are payable to the municipality's treasurer. By law, these citations may be contested through a municipal hearing procedure and appealed to Superior Court.

### **§§ 6 & 7 — NEW HOME CONSTRUCTION GUARANTY FUND**

Under current law, a consumer who is awarded a judgment (e.g., a

binding arbitration decision, court judgment, order, or decree) against a registered new home construction contractor but is unable to satisfy the judgment (i.e., get payment from the contractor) may apply to the Department of Consumer Protection (DCP) to instead recuperate the judgment amount (up to a specified maximum) from the New Home Construction Guaranty Fund. (New home construction contractors annually pay into this fund when renewing their registrations.)

Under the bill, consumers may also recuperate money from the fund if the judgment was awarded against certain individuals with an ownership interest in a new home construction company who have been found by a court to have violated certain laws (i.e., “proprietors”).

More specifically, to qualify as a “proprietor,” the person must meet two criteria. First, he or she must have an ownership interest in a new home construction company that is currently, or was previously, registered by DCP. Second, he or she must have been found by a court to have violated the state’s new home construction contractor laws for the company’s conduct. The company must either be currently registered as a new home construction company or have been registered within two years before it entered into the contract with the consumer harmed by the company’s or owner’s actions.

The bill makes consumers awarded a judgement against a proprietor eligible for funds from the New Home Construction Guaranty Fund subject to the same conditions and requirements the law sets for consumers with a judgment against a contractor. For example, among other things, the consumer:

1. must apply in writing to DCP within two years of the judgment being finalized;
2. is eligible to receive payment from the fund (up to \$50,000 under the bill) for the actual damages and costs he or she was awarded by the court (excluding punitive damages) and minus any amount already recovered; and
3. must affirm that he or she has made a good faith effort to satisfy the judgment by following statutory post-judgment procedures.

Additionally, the bill makes new home construction contractors and proprietors liable for consumer payouts from the New Home Construction Guaranty Fund that result from a judgment against them.

## **BACKGROUND**

### ***Penalties Under CGS § 8-12***

By law, a municipality's zoning enforcement authority may issue written orders to remedy conditions in a building or premises that violate zoning regulations. The authority may also issue cease and desist orders for violations involving the grading of land, the removal of soil, or soil erosion or sediment control.

CGS § 8-12 subjects a person to a civil penalty of up to \$2,500 if he or she (1) has been served with a written order and fails to comply with it within 10 days, (2) has been served with a cease and desist order and fails to comply immediately, or (3) continues to violate the provision of the regulation specified in the order. In addition, the court can grant the municipality injunctive relief if a person subject to an order does not comply with it.

In addition to these penalties for violating an order, a violation of the underlying regulations is subject to civil and criminal penalties. Ordinarily, violations are subject to a court-imposed fine of between \$10 and \$100 per day. However, if the violation is willful, the violator is subject to a fine of between \$100 and \$250 per day, imprisonment of up to 10 days for each day of the violation (up to a maximum of 30 days), or both. A willful violator may also be responsible for the municipality's costs and attorney's fees.

## **COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 21 Nay 0 (03/22/2024)

Appropriations Committee

Joint Favorable

Yea 53 Nay 0 (04/22/2024)